



June 28, 2013

Honorable Shoshana Grove
Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Ms. Grove:

Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service (Postal Service) is providing copies of an Amendment to the Australian Postal Corporation – United States Postal Service Bilateral Agreement and an associated annex. The Postal Service has marked the non-public versions of the documents as "Confidential" and "Non-Public" because the documents contain information considered confidential and commercially sensitive by the affected postal operators and the Postal Service.

The Postal Service considers certain portions of the documents to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, the documents contain the commercial information of several postal operators, and as such, certain portions of the instruments are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of these documents under 39 C.F.R. § 3007.21. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that the documents become subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operators.

Please feel free to contact me if further information would be helpful.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony F. Alverno".

Anthony F. Alverno
Chief Counsel, Global Business &
Service Development

Enclosure

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed Amendment One to the “Australian Postal Corporation – United States Postal Service Bilateral Agreement” (Amendment). The Postal Service provides the Amendment to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). The Amendment concerns the acquisition of certain services from Australian Postal Corporation. As such, it constitutes a commercial agreement with an agency of a foreign government. The unredacted Amendment is being filed under seal, while a redacted copy is included as an enclosure to this transmittal. The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3) and (4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment

competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).¹ Because the portions of materials filed non-publicly fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of agreements such as the one transmitted here, the Postal Service believes that the postal operator that has signed the document is the only third party with a proprietary interest in the materials. Due to the sensitive nature of the Postal Service's rate relationship with the affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices. The Postal Service identifies as an appropriate contact person Ms. Lea Emerson, Executive Director, International Postal Affairs. Ms. Emerson's phone number is (202) 268-2574, and her email address is lea.emerson@usps.gov.²

The Postal Service has already informed the postal operator, in compliance with 39 C.F.R. § 3007.20(b), about the nature and scope of this filing

¹ The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

² The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances, for the reasons provided in the text above.

and about the postal operator's ability to address any confidentiality concerns directly with the Commission.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

The Postal Service is transmitting an amendment to its bilateral contractual agreement with the Australian Postal Corporation concerning services that the Australian Postal Corporation will provide for the return of merchandise to the Postal Service for delivery to merchants in the United States. The Amendment defines the terms and conditions under which the Australian Postal Corporation will provide these services, including the rates that the Australian Postal Corporation will charge the Postal Service and accounting information.

The Postal Service maintains that the redacted portions of the documents should remain confidential. Some of the material redacted from the Amendment is marked because disclosure of it would enable a competitor to deduce the nature of redacted commercially sensitive information.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Parcel

delivery competitors in the United States could use the terms of the agreement to negotiate more favorable rates for similar services with the Australian Postal Corporation or could use the rates offered by the Australian Postal Corporation to set their own more favorable rates to U.S. merchants for similar services. Since the U.S. parcel delivery service competitors are not required to cover their costs for each product they offer, they could offer similar services at below cost to unfairly compete with the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Parcel delivery competitors in the United States could use the terms of the agreement to negotiate more favorable rates for similar services with the Australian Postal Corporation.

Hypothetical: The terms of the agreement, including the manner in which the service is provided, the rates, and the terms and conditions under which it is offered are made public on the Commission's website. A competing U.S. parcel delivery provider reviews the information, which is information that would otherwise be unavailable. The competitor analyzes the information and approaches the Australian Postal Corporation with a proposal for the Australian Postal Corporation to provide it similar services. Because it has "inside" information, the competitor would be better prepared to predict the lowest rate that it could negotiate with the Australian Postal Corporation, given the conditions

under which the service were to be provided and would be better prepared to take a hard line in its negotiations.

Harm: U.S. parcel delivery competitors could use the rates offered by the Australian Postal Corporation to set their own more favorable rates to U.S. merchants for similar services.

Hypothetical: The commercially confidential information contained in the contract amendment is published on the Commission's website. U.S. parcel delivery service companies analyze the contract and determine, based on information in the contract and other reasonable business assumptions, what the likely floor is for the Postal Service's pricing for the product. Then the competitor is able to promote its own similar services at below what it believes to be 100 percent cost coverage to increase its market share and force the Postal Service to retreat from entry into the market.

In addition to promoting a lower price for its services, the competitor could also use the terms and conditions of the product as described in the agreement between the Australian Postal Corporation and the Postal Service to differentiate its own products or change the nature of its services to give them an appearance of being a better quality or value for price than the service offered by the Postal Service.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market, as well as their consultants and

attorneys, except for the foreign postal operator that is a party to the agreement and that therefore already has access to this information. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for similar products should not be provided access to the non-public materials.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

**AMENDMENT ONE TO THE "AUSTRALIAN POSTAL CORPORATION –
UNITED STATES POSTAL SERVICE BILATERAL AGREEMENT"**

This Amendment modifies the Agreement between the United States Postal Service ("USPS") and Australian Postal Corporation ("Australia Post" or "AUP") (the "AUP-USPS Bilateral Agreement"), signed by the USPS on September 29, 2011, and by AUP on September 30, 2011 pursuant to article 18 of the AUP-USPS Bilateral Agreement.

This Amendment modifies the AUP-USPS Bilateral Agreement in the following ways:

- 1 Creation of new Annex 7 "Agreement on the International Exchange of International Merchandise Return Service (IMRS) between the U.S. Postal Service and Australian Postal Corporation," including Schedule A to Annex 7 "IMRS Settlement Rates." The parties thereafter agree to incorporate in the AUP-USPS Bilateral Agreement this new Annex 7 which establishes mutually agreed terms and conditions for the exchange of IMRS between the USPS and AUP and which will govern the exchange of IMRS thereafter.
- 2 This Amendment shall come into force on the later of the two dates on which it is signed by the Parties' representatives below, and it shall remain in effect for the same term as the AUP-USPS Bilateral Agreement.
- 3 Notwithstanding the date on which the Agreement comes into force, its effective date remains subject to the Conditions Precedent listed in Article 3 of the AUP-USPS Bilateral Agreement. The Parties may execute this Amendment in one or more counterparts (including by facsimile or by electronic means such as .pdf format). Not all Parties need be signatories to the same document. All counterpart signed documents shall be deemed an original and one instrument.

All other terms and conditions of the AUP-USPS Bilateral Agreement shall remain in force.

IN WITNESS WHEREOF, the Parties agree to be bound as of the latest date of signature to the terms and conditions of this Amendment.

AUSTRALIAN POSTAL CORPORATION

U.S. POSTAL SERVICE



Mark Crawford
General Manager, International



Giselle Valera
Managing Director, Global Business, and
Vice President

28th May 2013

(Date)

May 22, 2013

(Date)

Annex 7 - Agreement on the Exchange of International Merchandise Return Service between the U.S. Postal Service and the Australian Postal Corporation

Article 1: Purpose of the Agreement

The purpose of the Agreement shall be to establish mutually agreed terms and conditions for the International Merchandise Return service from the Australian Postal Corporation (AUP) to the United States Postal Service (USPS) and within the framework of the AUP-USPS Bilateral Agreement.

Article 2: Precedence of Agreements

Terms of agreements shall be applied in the following order of precedence when interpreting this Agreement in the case of doubt, ambiguity, conflict or dispute:

1. Specific processes, conditions, and rates set forth in this Annex 7 and its Schedule A.
2. Terms of the Australian Postal Corporation-United States Postal Service Bilateral Agreement effective January 1, 2012 through December 31, 2013.

Operational Procedures of the International Merchandise Return Service (IMRS)

1. U.S. Merchant shall send goods to customer in Australia using USPS or any other outbound carrier.
2. Customer in Australia wishing to return an item shall contact U.S. Merchant and follow the Merchant's instructions for requesting return service and label. The instructions may vary by Merchant but must require the customer to submit detailed item information to the Merchant [REDACTED]
3. U.S. Merchant shall authorize the return and acquire return label by accessing [REDACTED]
4. [REDACTED] sends the label data [REDACTED] for the purpose of obtaining the IMRS label and customs declaration.
5. U.S. Merchant shall provide by electronic means (e-mail, .pdf download, etc) the label and customs declaration to the customer in Australia.
6. All IMRS labels shall utilize the S10 barcode identifier. Air Parcel IMRS shall reflect the "CU" prefix. Both constructs shall end with "AU".
7. AUP shall capture IMRS item weights and transmit IMRS item barcodes and associated item weights in PREDES messaging upon dispatch.
8. The Air Parcel IMRS items shall be dispatched and returned to USPS [REDACTED]

International Merchandise Return Service Rates

Schedule A outlines the rates applicable to IMRS items for the 2013 calendar year, ending 31 December 2013. [REDACTED]

International Merchandise Return Service Billing

AUP shall include IMRS item-level barcodes and weight data in PREDES messaging to USPS at the point of dispatch. Utilizing information from AUP's PREDES, IPC shall provide a monthly and quarterly report to AUP and USPS which will include the following required information:

1. A listing of IMRS item identifiers beginning with "CU" for all labels generated
2. An "Applied Invoice Weight" per item
3. Listing of billable and non-billable volume
4. Total billable item count and average billable weight

USPS/AUP Settlement

[REDACTED] The standard USPS/AUP settlement process for IMRS items returned as AUP's Air Parcels will be applied.

[REDACTED]

USPS/AUP Customer Service Support for Inquiries, Claims and Liability

1. AUP shall enable customer support services to customers in Australia.
2. One quarter after launching IMRS, AUP and USPS shall work together to determine the success of the IMRS product based on user feedback and the rate of IMRS adoption.
3. At that time, AUP and USPS shall make the determination [REDACTED]
4. [REDACTED] AUP and USPS shall work together to determine the rules of liability for IMRS and the appropriate inquiry and claims process.

Schedule A to Annex 7 – IMRS Settlement Rates

The following rates are irrespective of IMRS volume dispatched from Australia Post to USPS, [REDACTED] and are applicable on a per (piece) item and [REDACTED] basis:

2013 IMRS Settlement Rates	Per Piece (SDR)	Per [REDACTED] (SDR)
IMRS – Air Parcel Service	[REDACTED]	[REDACTED]